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Trafficking in persons, especially women and children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, in accordance with Human Rights Council resolution 17/1.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Summary

The present report provides a description of the activities undertaken by the Special Rapporteur from 1 August 2012 to 31 July 2013. It also contains a thematic analysis of the issue of trafficking in persons for the removal of organs, in which the Special Rapporteur specifically examines exploitation of persons who are compelled by need or force to provide organs for transplantation to people within their own countries or to foreigners. The Special Rapporteur provides a description of the problem and examines legal and policy responses at the international, regional and national levels. She then considers exploitation in transplantation as a form of trafficking in persons and the extent to which this framework provides a structure within which more effective, rights-based responses can be developed and implemented. Lastly, the Special Rapporteur offers conclusions and recommendations to States and stakeholders.

I. Introduction

1. The present report provides a description of the activities of the Special Rapporteur on trafficking in persons, especially women and children, from 1 August 2012 to 31 July 2013. The thematic focus of the report is on trafficking in persons for the removal of organs.

II. Activities of the Special Rapporteur

2. With regard to the activities carried out from 1 August 2012 to 28 February 2013, the Special Rapporteur refers to her report to the Human Rights Council at its twenty-third session (A/HRC/23/48). Her activities from 1 March to 31 July 2013 are briefly set out below.

A. Participation in events, conferences and consultations

3. On 1 March 2013, the Special Rapporteur convened the first regional consultation on the right to an effective remedy for trafficked persons, involving representatives of Eastern European States and Western European and other States, in addition to experts and relevant stakeholders. Held in Geneva, it was intended to solicit comments on the draft basic principles on the right to an effective remedy for trafficked persons in preparation for her report to the Human Rights Council at its twenty-sixth session pursuant to Council resolution 20/1.

4. On 11 March, the Special Rapporteur attended the fifty-seventh session of the Commission on the Status of Women and held, together with the Vice-Chair of the Working Group on the issue of discrimination against women in law and in practice, an interactive dialogue with the States members of the Commission. On 14 March, she convened a side event on the right to effective remedies for trafficked persons in order to present the main findings of her thematic report on the topic and to solicit suggestions from States, relevant United Nations entities, regional and intergovernmental bodies, academic institutions and civil society on the draft basic principles.

5. On 4 and 5 April, the Special Rapporteur participated in the 2013 Women in the World Summit, held in New York.

6. On 8 May, the Special Rapporteur participated in an expert meeting on the theme "Corporate responsibility to respect human rights: addressing trafficking and forced labour in supply chains". In conjunction with that event, she attended, on 9 May, a discussion on the theme "Engaging business: implementing respect for human rights", which was hosted by the Coca-Cola Company.

7. On 13 May, the Special Rapporteur participated in the high-level meeting of the General Assembly on the appraisal of the United Nations Global Plan of Action to Combat Trafficking in Persons.

8. On 21 May, the Special Rapporteur attended the twenty-fifth quadrennial congress of the International Council of Nurses, held in Melbourne, at which she discussed the impact of human trafficking on the sexual and reproductive rights of trafficked persons.

9. On 23 and 24 May, the Special Rapporteur convened a consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms, in Berlin, to provide an opportunity to share experiences and lessons learned and further strengthen the partnership between her mandate and such mechanisms. A total of 40 people, including national rapporteurs and representatives of equivalent mechanisms from 19 countries, in addition to representatives of relevant United Nations, international and regional organizations, participated.

10. On 28 May, the Special Rapporteur presented her thematic report to the Human Rights Council at its twenty-third session, discussing the integration of a human-rights-based approach in measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and that leads to human trafficking. On 27 May, she participated in a side event on clarifying the concept of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, organized by the permanent missions of Switzerland and Egypt to the United Nations Office and other international organizations in Geneva and the United Nations Office on Drugs and Crime. On 29 May, she convened, in collaboration with the Permanent Mission of Germany to the United Nations Office and other international organizations in Geneva, a side event on the theme "Human trafficking and exploitative labour in supply chains: addressing the demand and supply sides".

11. On 25 June, the Special Rapporteur made an opening statement at the thirteenth High-level Alliance against Trafficking in Persons conference. The conference, on the theme "Stolen lives, stolen money: the price of modern-day slavery", was organized by the Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings of the Organization for Security and Cooperation in Europe (OSCE).

12. On 25 and 26 June, the Special Rapporteur participated in a conference entitled "Vienna +20: advancing the protection of human rights", co-hosted by the Office of the United Nations High Commissioner for Human Rights and the Government of Austria and intended to commemorate the twentieth anniversary of the World Conference on Human Rights.

13. On 2 July, the Special Rapporteur exchanged views with the Group of Experts on Action against Trafficking in Human Beings on possible joint actions and strengthening synergy and sharing of information.

14. From 16 to 18 July, the Special Rapporteur participated in the third Latin American Congress, which had the theme "Globalization, human trafficking and access to justice: articulation of regional dialogues" and was held in Bogota.

15. On 22 July, the Special Rapporteur convened a regional consultation on the right to an effective remedy for trafficked persons, involving representatives of Latin American and Caribbean States, in addition to experts and relevant stakeholders. The consultation, held in Santiago, was intended to solicit input on the draft basic principles on the right to an effective remedy for trafficked persons.

B. Country visits

16. The Special Rapporteur visited Morocco from 17 to 21 June 2013 at the invitation of the Government. During that mission, she also visited Dakhla, Western Sahara. A full report on her visit will be submitted to the Human Rights Council at its twenty-sixth session.

17. The Special Rapporteur sent visit requests to Antigua and Barbuda, Belize and the Dominican Republic. She looks forward to receiving positive replies. She regrets that Barbados and Jamaica declined her requests to visit.

III. Thematic analysis

A. Background and context

18. The transplantation of organs from a living or deceased person into another person is a relatively new area of medical practice but one that is rapidly accelerating as a result of advances in surgery, immunology and pharmacology. Deceased persons remain the source of many organ transplants and indeed are the only possible source for certain transplants, such as those involving hearts and lungs. It is, however, increasingly possible, and in some cases preferable, to use the organs of living persons for some transplant procedures. Kidneys, for example, can be transferred from a living person, often with better results for the recipient and, in theory at least, with little harm to the donor.

19. Worldwide, there is an acute shortage of organs for transplantation, which effectively means that many people who would have benefited from such treatment will die. The mismatch between the growing demand for organ transplants and the strict limits on available supply is the root cause of many of the legal, ethical and human rights issues that arise around organ transplantation. For example, there is great debate around consent for deceased organ "donation" and even around the definition of death. In relation to both deceased and live transplantation, a key issue is the question of commercialization. The dominant view is that organs for transplantation should be a gift, generated by an act of altruism that is not distorted by incentives or payments. A money-driven market in organs is seen to benefit the rich at the expense of the poor, opening the door to greater exploitation of both the seller and the buyer. Others argue, however, that this system will never begin to satisfy the demand for transplants, that it produces wasteful inefficiencies and that it contributes to the growth of exploitative and uncontrolled shadow markets.

20. The focus of the present report is on one aspect of the broader environment sketched above: the exploitation of persons who are compelled by need or force to provide organs for transplantation to people within their own countries or to foreigners, to use the language of the Doha Communiqué of the Declaration of Istanbul Custodian Group, adopted on 14 April 2013. The terminology around this phenomenon is not settled. Some States and intergovernmental organizations claim that there is a difference between trafficking in organs and trafficking in persons for the removal of organs, with the latter a small subset of the former. The Special Rapporteur considers that the difference is largely semantic, given that organs are not moved or traded independently of their source. Rather, the source is moved or positioned in such a way as to make transplantation possible. Accordingly, it is more

accurate to characterize the practice described above as "trafficking in persons for the removal of organs".

21. The restricted scope of the present report is a reflection of the mandate of the Special Rapporteur. It also reflects an appreciation of human exploitation for the purposes of organ transplantation, primarily from living sources, as a discrete problem that requires specific solutions. It is important, however, to acknowledge that this issue cannot be fully separated from broader questions around transplantation, including those relating to equitable allocation of organs and approaches to dealing with organ shortages. The exploitation of human beings for purposes of organ transplantation is also linked to other commodification practices, such as transnational commercial surrogacy, which hold special dangers for the rights and dignity of the world's poorest and most vulnerable, and to broader questions of justice and rights that arise in the context of medical tourism.

B. Nature and scope of the problem

22. Available information on trafficking in persons for the removal of organs is incomplete and often unverified. Scholarly research in this area is not yet well developed and anecdotal reports from civil society organizations and the media remain the primary source of information. Part of the problem lies in the clandestine nature of the trafficking. Even more so than other forms of trafficking in persons, those involved in trafficking in persons for the removal of organs (including victims) have very little incentive to come forward to researchers and criminal justice authorities with information and evidence. Victims are also unlikely to be identified through the multitude of channels that are now used to identify other victims of trafficking such as those subject to forced labour or sexual exploitation. Health-care providers who end up treating persons who have obtained organs abroad may be inhibited from sharing information with the authorities owing to concerns over patient privacy, their own obligations of confidentiality, uncertainty as to whether any laws have been breached or, indeed, their own complicity in the arrangement. Furthermore, definitional problems and confusion contribute to poor reporting and analysis and render comparisons between countries and between transplantation practices extremely difficult.

23. While substantial gaps in knowledge and understanding remain, it is now well established that there are no technical or practical obstacles to trafficking in persons for the removal of organs, that this practice does in fact occur and that it is not rare. The main points of disagreement relate to the extent of the problem, the economics of the trafficking and identification of the many parties that may be implicated.

24. In 2000, the flow of organs was believed to follow the modern route of capital: from the South to the North, from the Third World to the First World, from poor to rich, from black and brown to white, and from female to male.[1] Data reviewed by the Special Rapporteur generally confirmed the key points of this assertion, except in relation to the gender aspect. The trade in organs sharply reflects economic and social divisions within and, most particularly, between countries. Recipients are generally independently wealthy or supported by their Governments or private

[1] See Nancy Scheper-Hughes, "The global traffic in human organs", *Current Anthropology*, vol. 41, No. 2 (2000), p. 193.

insurance companies. Victims are inevitably poor, often unemployed and with low levels of education, rendering them vulnerable to deception about the nature of the transaction and its potential impacts. Available information indicates that, while trafficking in persons for the removal of organs can occur within a single country, it may involve legitimate regional cooperation or, most commonly, potential recipients travelling to another country for a transplantation that would be unlawful or otherwise unavailable at home (known as "transplant tourism").[2] Intermediaries, including brokers and health-care providers, arrange the recipients' travel and recruit "donors".

25. Case studies examined by the Special Rapporteur involving victims from Eastern Europe, South America and Asia indicate that poor and often desperate individuals are lured into selling their organs on the promise of considerable payment that is almost never made in full. Many are also deceived about the nature of the procedure, the risks involved and the follow-up care required or to be provided. Debt bondage and extortion are used as forms of coercion. Passports are commonly withheld as a means of maintaining control over the movement of the victim before the operation. Efforts to back out of an agreement to sell an organ are met with violence and threats of violence. After the transplantation, organizers continue to threaten victims in order to ensure their silence. Victims are not offered adequate post-operative medical care and suffer physical and psychological harm and social exclusion.

26. While persons travelling abroad to receive purchased organs come from many countries and from all regions of the world, "a heavier reliance on overseas transplantation and transplant tourism is believed to exist in Asia and the Middle East than in other regions".[3] Recently, some countries have been identified as organ-importing, or "demand", countries in which criminal prosecutions for trafficking in persons for the removal of organs have been initiated.[4]

27. The following case study summaries provide some indication of the nature of trafficking in persons for the removal of organs and of the many countries that may be involved.

28. Some 100 illegal kidney transplants were allegedly performed at a hospital in an African country from 2001 to 2003; most of the recipients came from the Middle East. The organs were sourced from persons from Eastern Europe and South America. Investigations revealed the existence of an international organ trafficking syndicate and brought into public view a long-standing and flourishing transplant tourism business.[5]

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[2] See D. A. Budiani-Saberi and F. L. Delmonico, "Organ trafficking and transplant tourism: a commentary on the global realities", *American Journal of Transplantation*, vol. 8 (2008), pp. 925-929.

[3] See Yosuke Shimazono, "The state of the international organ trade: a provisional picture based on integration of available information", *Bulletin of the World Health Organization*, vol. 85, No. 12 (2007), pp. 955-962.

[4] See OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings* (Vienna, 2013). Available from www.osce.org/cthb/103393.

[5] See A. Nicolaides and A. Smith, "The problem of medical tourism and organ trafficking", *Medical Technology SA*, vol. 26, No. 2 (2012), pp. 33-38; Jean Allain, "Trafficking of persons for the removal of organs and the admission of guilt of a South African hospital", *Medical Law Review*, vol. 19, No. 1 (2011), pp. 117-122.

29. In April 2013, five Kosovars, including three medical practitioners, were convicted of involvement in an organ trafficking syndicate that lured poor people from the Republic of Moldova, the Russian Federation and Turkey to Kosovo to sell their kidneys and other organs to wealthy transplant recipients from Canada, Germany, Israel and the United States of America. Recipients were charged up to $130,000. Victims, including five children, were promised payments of up to $26,000 and signed false documents in which they indicated that they were engaging in an altruistic donation to a relative. Many received no compensation or inadequate medical care.[6] The European Union Rule of Law Mission in Kosovo has since announced further investigations that will target government officials allegedly involved in the syndicate.

30. There is growing evidence that Sudanese migrants making their way to Europe with the help of smugglers are allegedly being targeted for organ harvesting in Egypt. Smugglers detain them in Cairo and demand large sums of money for travel and other costs. Victims are often deceived into consenting to sell their organs or are unaware that their organs will be removed as a way of discharging the alleged debt (see A/HRC/20/30). In 2011, 57 such victims, including five children, reported a deterioration of their health and negative social, economic and psychological consequences following the experience.[7]

31. A very different picture of organ "trade" involves the harvesting by the State of organs of persons who have been or are being executed. Allegations of such practices have been levelled at a number of countries, including in East Asia, from where consistent and credible evidence has emerged.[8]

C. International responses

32. One key feature of the response to trafficking in persons for the removal of organs is its separation from the broader international movement against trafficking in persons. Initial leadership in debate and action around trafficking in persons for the removal of organs was largely provided by the medical and transplant communities, which have been central to identifying the existence of a problem and developing standards and protocols for practitioners. For example, since 1985, the General Assembly of the World Medical Association has issued a series of resolutions and guidelines in which it has condemned the human organ trade and urged Governments to take action to prevent commercial markets. It has also addressed the use of organs from executed prisoners. At the sixty-third General Assembly of the World Medical Association, held in Bangkok in October 2012, a

[6] See Dan Bilefsky, "5 are convicted in Kosovo organ trafficking", *New York Times*, 29 April 2013.

[7] See Coalition for Organ Failure Solutions, "Sudanese victims of organ trafficking in Egypt: a preliminary evidence-based, victim-centered report by the Coalition for Organ Failure Solutions" (December 2011). Available from www.cofs.org/english_report_summary_dec_11_2011.pdf.

[8] See David Matas and Torsten Trey, eds., *State Organs: Transplant Abuse in China* (Woodstock, Ontario, Seraphim Editions, 2012). See also Mingxu Wang and Xueliang Wang, "Organ donation by capital prisoners in China: reflections in Confucian ethics", *Journal of Medicine and Philosophy*, vol. 35, No. 2 (2010), pp. 197-212; and G. M. Danovitch, M. E. Shapiro and J. Lavee, "The use of executed prisoners as a source of organ transplants in China must stop", *American Journal of Transplantation*, vol. 11, No. 3 (2011), pp. 426-428.

statement on organ and tissue donation was adopted, in which the Assembly affirmed its rejection of the practice in all cases because of the impossibility of instituting adequate safeguards against coercion.

33. The Transplantation Society, an international non-governmental organization composed of physicians, surgeons and scientists involved in organ transplantation, has consistently opposed the commercialization of such procedures and issued a number of important statements on ethical issues around organ transplantation. In 2008, the Transplantation Society and the International Society of Nephrology developed a professional code of practice aimed at improving the quality and availability of organ transplantation while also addressing the key ethical issues facing practitioners. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, adopted at an international summit on transplant tourism and organ trafficking convened by the Transplantation Society and the International Society of Nephrology in Istanbul, Turkey, from 30 April to 2 May 2008, has exerted significant influence over responses at the national, regional and international levels. The language of the Declaration is unequivocal with regard to trafficking in persons for the removal of organs, stating in its principle 6 that "organ trafficking and transplant tourism violate the principles of equity, justice and respect for human dignity and should be prohibited". It goes on to affirm that transplant commercialism should be prohibited because it "targets impoverished and otherwise vulnerable donors [and] leads inexorably to inequity and injustice".

34. The United Nations has also been active in debates and setting standards regarding trafficking in persons for the removal of organs, most particularly through the World Health Organization (WHO), which has issued a series of resolutions and guidelines on the subject, the most recent being the WHO guiding principles on human cell, tissue and organ transplantation, endorsed in 2010 by the sixty-third World Health Assembly in its resolution 63.22. Among other things, they stipulate that the human body and its parts are not to be the subject of commercial transactions and, in guiding principle 5, that "purchasing, or offering to purchase, cells, tissues or organs for transplantation, or their sale by living persons or by the next of kin for deceased persons, should be banned".

35. Trafficking in persons for the removal of organs and the related practices discussed herein have not been a central concern for the international human rights system. Only the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography explicitly addresses the issue by, under article 3 (1)(a)(i)(b), prohibiting the transfer of the organs of a child for profit. The Committee on the Rights of the Child has addressed the sale of organs in its consideration of national reports and the Special Rapporteur on the sale of children, child prostitution and child pornography has also raised concerns. The use of organs from executed prisoners in transplantation programmes in East Asia has attracted more focused attention from some parts of the human rights system, including the Committee against Torture.

36. The most significant international treaty on the subject, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, includes removal of organs as a form of exploitation associated with trafficking. Other features of the definition that link transplantation-associated exploitation are the acknowledgement of consent as being irrelevant when any of

the stipulated means are used to secure recruitment, transfer, etc., and the list of means itself, which includes fraud, coercion and abuse of a position of authority.

D. Regional responses

37. With a few exceptions, regional intergovernmental responses to trafficking in persons for the removal of organs have been limited to the European system. Those responses have generally been on two tracks that mirror developments elsewhere: responses that have focused on trafficking in organs and responses that have included organ removal within definitions and instruments dealing with trafficking in persons. In relation to the second category, it should be noted that the major specialist instruments dealing with trafficking in persons within Europe (the Council of Europe Convention on Action against Trafficking in Human Beings and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA) both include organ removal as a form of trafficking-related exploitation. In relation to the first category, the Council of Europe has been especially active. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine articulated many of the principles affirmed in other instruments, including, in article 21, that "the human body and its parts shall not, as such, give rise to financial gain". An additional protocol to the Convention concerning transplantation of organs and tissues of human origin, adopted in 2001, extended its provisions to many issues associated with organ and tissue transplantation, including a prohibition on the (undefined) practice of organ trafficking. It has been noted that the practice infringes human rights, exploits vulnerable persons and undermines public trust in the transplant system.[9] Consideration of this issue was extended in 2003 when the Parliamentary Assembly issued a recommendation on trafficking in organs in Europe.

38. Subsequent study and research within the Council of Europe led to the conclusion that there were important loopholes in the international legal framework that were insufficiently addressed by existing instruments dealing with trafficking in persons.[9] That conclusion led to the development in 2013 of a draft Council of Europe convention against trafficking in human organs. The draft convention is intended to prevent and combat trafficking in human organs by providing for the criminalization of specific acts, protecting the rights of victims and facilitating national and international cooperation on the issue. The Special Rapporteur's analysis of the provisions and the explanatory documentation confirms the potential importance of this instrument, but indicates a number of potential issues of concern, including questions around the non-definition of trafficking in organs and the relative weakness of provisions relating to victim protection and support in comparison with those available to victims of trafficking under existing international law, including the Council of Europe Convention on Action against Trafficking in Human Beings.

[9] See United Nations and Council of Europe, "Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs" (Strasbourg, 2009). Available from www.coe.int/t/dghl/monitoring/trafficking/docs/news/organtrafficking_study.pdf.

E. National responses

39. National legal frameworks governing organ transplantation can be extremely complex, addressing a wide range of matters, many of which affect, directly or indirectly, trafficking in persons for the removal of organs. The main issues are briefly described below.

40. **Prohibition of commercialism (buying, selling and financial gain)**. The international and regional standards mentioned above, which unanimously advocate prohibition of the buying and selling of human organs, have been incorporated by most countries into national law. The Islamic Republic of Iran runs a system of regulated, paid living and deceased organ donation that provides the notable exception.[10] In countries that prohibit the sale of organs, donors may nevertheless receive limited compensation, which is not considered payment. Some countries, such as the United States, reimburse some expenses and give grants for programmes to increase donations and effective transplant process.[11] Other countries, including Israel and Singapore, have gone much further in incentivizing donation, for example by according priority for transplantation to persons on the national donor registry.[12]

41. **Prohibition of transplant tourism**. While the sale and purchase of organs is almost universally prohibited, these laws typically apply only to, or are enforced only in respect of, conduct within the territory or under the jurisdiction of the legislating State. In some countries, this is because the laws themselves do not extend to extraterritorial conduct. In other countries, criminal jurisdiction may, in principle, extend to the conduct of a national abroad but is rarely, if ever, applied in this way. The result is similar in both situations: recipients of illicitly obtained organs are almost never prosecuted by their country of origin or indeed by any other country.[13] The importance of attaching extraterritorial provisions to national laws has been noted and bills to this effect have been put before parliaments in several countries. Prohibition of transplant commercialism in countries of destination will generally amount to a ban on transplant tourism. Some countries of destination have put in place additional legislative measures aimed at combating transplant tourism (for example, restricting participation in official transplantation programmes to nationals). The imposition of such a measure in the Philippines is reported to have cut off a critical link to a transplant tourism market based on poverty and corruption and shifted government attention to preventing kidney disease and encouraging deceased donations (see A/HRC/23/48/Add.3).

[10] See Ahad J. Ghods and Shekoufeh Savaj, "Iranian model of paid and regulated living-unrelated kidney donation", *Clinical Journal of the American Society of Nephrology*, vol. 1, No. 6 (2006), pp. 1136-1145; Anne Griffin, "Iranian organ donation: kidneys on demand", *British Medical Journal*, vol. 334, No. 7592 (2007), pp. 502-505.

[11] See United States, Organ Donation and Recovery Improvement Act, Public Law No. 108-216 (5 April 2004).

[12] See Singapore, Human Organ Transplantation Act (1987, amended 2009). On Israel, see Gabriel M. Danovitch and others, "Organ trafficking and transplant tourism: the role of global professional ethical standards — the 2008 Declaration of Istanbul", *Transplantation*, vol. 95, No. 11 (2013), pp. 1306-1312.

[13] That situation is part of a broader trend that is well captured by OSCE in its recent report: "When places of THB/OR are discussed, the focus generally falls on the locus of transplant surgeries and the country of the organ donors." OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region*, p. 45.

42. **Prohibition of trafficking in persons for removal of organs**. States parties to the Trafficking in Persons Protocol, of which there are currently 157, are required to criminalize trafficking of persons for a range of purposes, including for organ removal. Most countries have enacted such laws, but not all have included trafficking in persons for the removal of organs within their scope. It is relevant to note that, within national legislation, the offence of trafficking in persons often has a broad jurisdictional basis that enables prosecution for offences occurring outside the country involving a citizen as either a victim or a perpetrator, thereby opening up a potential avenue to prohibit and prosecute practices relating to transplant tourism. The offence may bring such practices within the operation of other national laws, such as those relating to transnational organized crime, corruption and money laundering.[14] Conduct relating to trafficking in persons for the removal of organs may also be subject to prosecution through the application of criminal laws dealing with matters such as assault, fraud and falsification of identity or travel documentation.[15]

43. **Enforcement of trafficking in persons for the removal of organs and related laws**. There is little information available on prosecutions for trafficking in persons for the removal of organs and related offences, although what information is available appears to confirm that the number of such prosecutions is extremely low.[16] It is certainly the case that the enforcement of laws around trafficking in persons for the removal of organs and related offences does not appear to be a high priority for most Governments or national criminal justice agencies. Recent high-profile prosecutions may indicate a shift in this situation, although that remains to be confirmed. Enforcement problems are not unique to trafficking in persons for the removal of organs. It is well established that, as a general crime type, trafficking in persons is extremely difficult to investigate and prosecute successfully.[17] There is, however, some indication that trafficking in persons for the removal of organs appears to present special and additional difficulties: victims have very little incentive to cooperate with criminal justice authorities and may themselves be liable to prosecution. In addition, the protection now available to many victims of trafficking aimed at encouraging such cooperation is rarely, if ever, extended to victims of trafficking in persons for the removal of organs. Law enforcement authorities lack expertise and awareness and the complexity of transnational networks operating in this area challenges even the most sophisticated agencies. Of course, prosecutions are only one measure of success. In some countries, new laws aimed at preventing trafficking in persons for the removal of organs may have

[14] For example, in the United Kingdom of Great Britain and Northern Ireland, part 7 of the Proceeds of Crime Act (2002) criminalizes money-laundering, but policy guidance by the Crown Prosecution Service for prosecuting cases of human trafficking, published in May 2011, indicates that trafficking, and organ trafficking specifically, is considered a "lifestyle offence" under that part.

[15] OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region*, pp. 35 and 36.

[16] See F. Ambagtsheer and W. Weimar, "A criminological perspective: why prohibition of organ trade is not effective and how the Declaration of Istanbul can move forward", *American Journal of Transplantation*, vol. 12, No. 3 (2012), pp. 571-575.

[17] See Anne Gallagher and Paul Holmes, "Developing an effective criminal justice response to human trafficking: lessons from the front line", *International Criminal Justice Review*, vol. 18, No. 3 (2008), pp. 318-343.

positively influenced this situation without the benefit of substantial prosecutions. In other countries, however, the enactment of laws banning commercialization of transplantation and other practices relating to trafficking in persons for the removal of organs appears to have had little impact.[18]

44. **Regulation of live organ donation**. It is well established that trafficking in persons for the removal of organs is often disguised as altruistic donation.[19] Many countries that operate a live donor programme based on altruism stipulate that there must be some form of relationship between the donor and the recipient. For example, in India, the Transplantation of Human Organs Act of 1994 allows, under section 9 (3), donations of organs between unrelated donors "by reason of affection or attachment towards the recipient". This is judged by one of several authorization committees, which include physicians, academics and people with "high integrity, social standing and credibility", as stated in section 6 of the Transplantation of Human Organs Rules, adopted in 1995. In Greece, a law on organ transplants passed in 2011 further broadened the scope of living donors to include "any person with which the patient has a personal relationship and is emotionally connected". Judicial permission is necessary in this case, and the judge must confirm "the validity and depth" of the relationship between donor and patient to ensure that the donation is truly altruistic.[20] In Germany, article 8 (1) of the Transplantation Act of 1997 permits live organ donations only between family members with "an extremely close degree of kinship".

45. **Regulation of deceased organ donation**. The way in which deceased organ donations are regulated can also affect trafficking in persons for the removal of organs. For example, it is argued that the opting-out system, whereby persons are presumed to have consented to donation unless otherwise indicated, will increase the number of organs available for transplantation, thereby reducing the various incentives that feed trafficking in persons for the removal of organs. It is important to note, however, that these approaches also carry risks with regard to the rights of vulnerable persons. For example, studies have found that such laws penalize the poor and illiterate, who lack the time, resources and knowledge to actively opt out.[21] Presumed consent laws could also encourage the withholding of life-saving measures from unprotected persons.

F. Importance of linking trafficking in persons for the removal of organs to trafficking in persons

46. Outside of the rules and standards that apply to trafficking in persons, the international legal framework around many of the practices examined herein is

[18] See Farhat Moazam, "Pakistan and kidney trade: battles won, battles to come", *Medicine, Health Care and Philosophy* (December 2012).

[19] See Tazeen H. Jafar, "Organ trafficking: global solutions for a global problem", *American Journal of Kidney Diseases*, vol. 54, No. 6 (2009), pp. 1145-1157.

[20] See Maria Bottis, "The new Greek statute on organ donation — yet another effort to advance transplants", *European Journal of Health Law*, vol. 19, No. 4 (2012), p. 393.

[21] See Sheri R. Glaser, "Formula to stop the illegal organ trade: presumed consent laws and mandatory reporting requirements for doctors", *Human Rights Brief*, vol. 12, No. 2 (2005), p. 22. For a consideration of how these concerns have played out in Brazil, see J. Andrew Hughes, "You get what you pay for? rethinking US organ procurement in light of foreign models", *Vanderbilt Journal of Transnational Law*, vol. 42 (2009), pp. 365-366.

extremely weak. For example, as shown above, there is no clear international prohibition against transplant tourism and very few States have succeeded in legislating effectively in the area. Commercialization of transplantation is subject to strong censure by WHO and professional groups and has been banned by many countries, but international law is silent on this issue. This lacuna creates gaps and weaknesses that prevent strong national responses, inhibit cross-border and international cooperation and obscure the very real human rights issues that lie at the heart of transplantation-related exploitation.

47. The identification of removal of organs as an exploitative purpose of trafficking in persons is a major step forward in changing this unsatisfactory situation. The opportunities presented by the development of a robust international legal framework around trafficking in persons have not yet been fully taken up, however. One of the principal reasons for the failure to leverage the trafficking in persons framework against transplantation-related exploitation is the persistent attachment of some States and intergovernmental organizations to a distinction between trafficking in organs and trafficking in persons for removal of organs. As shown above, this distinction is largely unjustified because the principal issue of focus, the exploitation of persons who are compelled by need or force to provide organs for transplantation to people within their own countries or to foreigners, falls squarely within the international legal definition of trafficking in persons.

48. This is confirmed by many of the case studies examined by the Special Rapporteur that meet the following three elements of the crime and human rights violation of trafficking in persons: the act (individuals were recruited, harboured and/or received, often also transported and transferred); the means (the acts were secured through fraud (relating to payment, effects, follow-up care, etc.), sometimes also through force and coercion, often through abuse of a position of vulnerability); and the purpose (the acts were undertaken for purposes of exploitation by removal of an organ). It is certainly possible that some of the cases may fall within the various non-legal and non-binding conceptions of trafficking in organs. There can be no doubt, however, that they are, first and foremost, situations of trafficking in persons. Critically, provided that one or more of the means are established, whether victims have consented to the procedure or have received payment for undergoing the procedure is irrelevant.

49. As has been noted previously, characterizing practices such as organ commercialization or transplant tourism as trafficking in persons for the removal of organs has a substantial effect on the nature of State obligations and on individual rights that arise as a result of those obligations. For example, States parties to the Trafficking in Persons Protocol are, pursuant to article 5, under a clear international legal obligation to criminalize trafficking in persons for the purpose of removal of organs as well as attempting, participating in, organizing and directing other persons in the commission of trafficking in persons for the purpose of removal of organs. They are also required to establish liability in respect of both natural persons and legal persons, thereby extending the reach of criminal and civil law to the medical and other establishments that are so often involved in trafficking in persons for the removal of organs.

50. The legal framework around trafficking in persons can also be effectively leveraged to tackle the phenomenon of transplant tourism by extending the jurisdictional reach of national criminal laws. While a State party to the Trafficking

in Persons Protocol is required to exercise jurisdiction over trafficking in persons for the removal of organs when the offence is committed in its territory (see art. 15 (1) of the United Nations Convention against Transnational Organized Crime), it may choose to extend that jurisdiction to situations where the offence is committed outside its territory against or by one of its nationals (see art. 15 (2)). Other central obligations that derive from both the Protocol and the Convention include an obligation to provide appropriate assistance to and protection of victims, including measures for physical, psychological and social recovery (art. 6); an obligation to establish policies, programmes and other measures to prevent and combat trafficking and protect victims (art. 9); an obligation of cross-border cooperation between law enforcement agencies and an obligation on States to strengthen capacity for such cooperation (art. 10); and an obligation to strengthen border controls to prevent and detect trafficking in persons for the removal of organs (art. 11).

G. Human-rights-based response to trafficking in persons for the removal of organs

51. The broader legal framework around trafficking in persons includes international human rights law. The importance of a rights-based and victim-centred approach to trafficking in persons has been well established and the parameters of such a response have been fleshed out in detail in the reports of the Special Rapporteur to the Human Rights Council and the General Assembly (see A/65/288 and A/HRC/20/18) and in the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1). Very little attention has been paid, however, to how such a response would be developed and applied in the context of trafficking in persons for the removal of organs. In general, it appears that the procedures and approaches developed to date do not take full account of the particularities of trafficking in persons for the removal of organs, including the needs of victims. This state of affairs has contributed to marginalization of victims and their rights, including within broader policy discussions around transplantation and transplantation-related exploitation.

52. For example, it is well established that failure to swiftly and accurately identify victims of trafficking effectively denies those persons the rights to which they are entitled. Victims of trafficking in persons for the removal of organs are almost never identified.[22] As understanding of trafficking in persons for the removal of organs improves, the reasons why are becoming clear. Such trafficking is a highly clandestine activity with little opportunity for public exposure. Victims may not perceive themselves as such, in particular if they have broken laws by engaging in an agreement to sell an organ. They often fear stigmatization and will hide the fact of their surgery, even from close family members. A further challenge to identification lies in the fact that, unlike other forms of trafficking, trafficking in persons for the removal of organs is essentially a one-off event that can often be completed within a very brief period, reducing the opportunity for detection.

[22] See *Global Report on Trafficking in Persons 2012* (United Nations publication, Sales No. E.13.IV.1), p. 12 ("trafficking for the removal of organs ... comprised 0.2 per cent of the total number of detected cases in 2010").

53. The obligation of active identification in this context will require States to, at a minimum, undertake national-level assessments of the problem with a view to ascertaining where victims (and potential victims) may be located and how they could be identified. There is also a clear need for States to examine existing procedures and protocols that relate to the identification of victims of trafficking in order to ensure their relevance and effectiveness with regard to trafficking in persons for the removal of organs. A similar need exists at the international level, given that the general invisibility of trafficking in persons for the removal of organs is reflected in many of the tools and mechanisms developed to support the identification of victims of trafficking.

54. The nature of trafficking in persons for the removal of organs also presents specific challenges in relation to victim protection and support that may not be met through conventional approaches. Victims have almost inevitably suffered serious physical injury and are also likely to be psychologically and emotionally traumatized. Social and religious stigma may exacerbate such trauma. Victims may also be in danger of retaliation from brokers and others involved in organizing their surgery. The nature of that intimidation may reflect the very particular nature of their exploitation, such as threats to withhold medical care or of humiliating public exposure.

55. Unfortunately, very few service providers working with victims of trafficking have any contact with, or knowledge of, victims of trafficking in persons for the removal of organs. This state of affairs has contributed to a situation where such victims largely remain "undetected, unidentified, without access to support, assistance and protection measures ... [with] no access to fundamental human rights".[23] It is unsurprising that the way in which victim support services have been developed for trafficked persons will not necessarily make them suitable or adequate for victims of trafficking in persons for the removal of organs. For example, victims will have long-term and immediate medical needs. They can expect to suffer gradual deterioration of their health and possibly a lifetime of financial disadvantage. No State currently has mechanisms and procedures in place to meaningfully respond to this level of need. Very few civil society organizations are working with and for victims of trafficking in persons for the removal of organs and those involved in this area report needs that go well beyond their capacity to meet.

56. Trafficked persons, including those who have been subject to trafficking in persons for the removal of organs, have the right to remedies for the harms committed against them. This right establishes a corresponding obligation on all States directly or indirectly implicated in the trafficking-related harm to provide access to such remedies. The Special Rapporteur has examined various ways in which the right to a remedy may arise, its substantive content and the associated procedural rights that are necessary for its realization (see A/HRC/17/35).

57. It is one thing to recognize a right to a remedy and quite another to ensure access to that right. The very low rate of victim identification in cases of trafficking in persons for the removal of organs means that the overwhelming number of persons who have suffered this harm will never be able to gain access to their legal entitlement to a remedy. The first and primary responsibility of States must therefore

[23] OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region*, p. 51.

be to work towards ensuring that victims of trafficking in persons for the removal of organs are swiftly and accurately identified. Even for victims who are identified as such however, obstacles to access to remedies are likely to be formidable. For example, many victims who have travelled to another country for surgery will not be identified until after they have returned, rendering it extremely difficult to secure restitution or compensation from or through the country in which the exploitation occurred. Such difficulties can be compounded by the fact that most victims are disempowered through poverty and illiteracy. Measures such as providing access to information and legal assistance, in addition to cross-border cooperation in relation to legal processes, will be crucial to making effective the right to a remedy for victims of trafficking in persons for the removal of organs.

58. It has been noted that victims of trafficking in persons for the removal of organs can be subject to criminal sanction, typically relating to their violation of a law that prohibits the sale of organs or that otherwise restricts the categories of persons permitted to donate an organ for transplantation. Victims could, however, also be criminalized for other status-related offences, such as irregular migration, document forgery and fraud. Criminalization is the antithesis of a victim-centred approach and invariably results in trafficked persons being denied the rights to which they are entitled under international law, including to assistance and protection and the right of access to remedies.[24] The Special Rapporteur has repeatedly endorsed the position that victims of trafficking should not be subject to criminalization for crimes that they have been compelled to commit (including through abuse of their position of vulnerability). In her view, this standard applies equally to victims of trafficking in persons for the removal of organs.

59. A rights-based approach to prevention of trafficking in persons for the removal of organs is of critical importance in view of the many complex and controversial issues raised by this particular form of exploitation. In developing strategies to address vulnerability and root causes, it will be important to cultivate stronger understanding of how trafficking in persons for the removal of organs happens and why. For example, information, awareness-raising and educational campaigns would appear to have special applicability in cases where exploitation is often made possible through misinformation. Prevention also requires measures to tackle the current high levels of impunity that exist around trafficking in persons for the removal of organs. States are obliged to develop a strong legal and regulatory framework and to take the steps necessary to establish an effective criminal justice response that targets those involved in the exploitation. The key elements of an effective criminal justice response to trafficking in persons have been identified.[25] It will be important to review these elements for their applicability to the very specific features of the crime of trafficking in persons for the removal of organs. For example, the requirement of a strong investigatory capacity will demand that law enforcement officials be made aware of trafficking in persons for the removal of organs and develop a capacity to identify both victims and perpetrators. While international cooperation is important in many trafficking cases, it is particularly

[24] See principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking. See also OSCE, *Policy and Legislative Recommendations towards the Effective Implementation of the Non-punishment Provision with regard to Victims of Trafficking* (Vienna, OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, 2013). Available from www.osce.org/cthb/101002.

[25] See Gallagher and Holmes, "Developing an effective criminal justice response".

critical in cross-border cases of trafficking in persons for the removal of organs where effective enforcement of national laws will often require information and evidence from other countries. The involvement of medical professionals in trafficking in persons for the removal of organs (as offenders, first-line responders and in a preventive capacity) must also be carefully considered in terms of developing appropriate preventive strategies.

60. The question of demand in the context of trafficking in persons is a vexed one (see A/HRC/23/48). The issue raises particular complexities in the case of trafficking in persons for the removal of organs. As noted above, demand for organs has grown through a confluence of factors and will probably never be met through a system of altruistic donations from deceased and live donors. It is therefore dangerous to develop policy responses on the basis that the only long-term solution to trafficking in persons for the removal of organs lies in an expansion of supply to meet demand. Human-rights-based examination of this debate, including calls for a regulated market in organs, is well overdue. While that issue is beyond the scope of the present report, some preliminary conclusions can be drawn. First and most importantly, it can be safely asserted that the focus of such an analysis would be squarely on the rights of the potential victim. A human-rights-based approach would seek to identify those approaches to transplantation that offer the best chance of protecting vulnerable persons from exploitation and that best support the core human rights principles of non-discrimination and equality. Such an approach would also probably be extremely critical of the unequal power relations that almost inevitably exist between "donors" and recipients, as well as between "donors" and those who profit financially from transplantation surgery. Such an approach would further view socioeconomic conditions as determinants for organ removal with great concern.

IV. Conclusions and recommendations

61. **Trafficking in persons for the removal of organs is, first and foremost, a violation of human rights. All States have an international legal obligation to prevent it, to prosecute offenders and to protect and assist victims. This obligation arises through the application of specialist trafficking in persons laws and through international human rights law.**

62. **The international legal framework around trafficking in persons for the removal of organs also provides important guidance for navigating the larger ethical and policy issues around transplantation and transplantation-related exploitation. For example, it can be convincingly argued that international human rights law and a rights-based approach support a complete rejection of all forms of transplant commercialism because of the inherent and ultimately unmanageable risks of exploitation. A human-rights-based approach will also accord priority to equality and non-discrimination over other considerations when it comes to developing responses to organ shortages and establishing criteria for equitable allocation of organs.**

63. **A survey of the legal and policy environment surrounding trafficking in persons for the removal of organs confirms that a lack of clarity around some key questions is hampering progress in efforts to combat this particularly egregious human rights violation. Most significantly, the Special Rapporteur**

has concluded that the distinction between trafficking in persons for removal of organs and trafficking in organs is generally unhelpful. Certainly, there is an urgent need to ensure that laws on trafficking in persons for the removal of organs are supplemented by the effective criminalization of all related offences that may be implicated in such cases but that may not readily or easily fall within the three-element umbrella definition of trafficking in persons. To that extent, the draft Council of Europe convention against trafficking in human organs represents a potentially important contribution to fleshing out the legal framework around trafficking in persons for the removal of organs and ensuring that all persons complicit in such offences do not escape liability. Case-based experience confirms, however, that the trade in organs is inextricably linked to actions against individuals aimed at their exploitation. There lies great danger in removing the individual victim from this picture by separating out the concept of trafficking in organs from the concept of trafficking in persons for the removal of organs.

64. There is also a risk that the development of a parallel legal regime for trafficking in organs will undermine the effectiveness of the extremely comprehensive legal regime that has been developed around trafficking in persons. Certainly, research conducted for the present report confirmed that the very robust and comprehensive set of rules and standards that apply to trafficking in persons for the removal of organs are not fully appreciated and are not being fully utilized. For example, as victims of trafficking in persons, those who have been subject to trafficking in persons for the removal of organs are entitled to a wide range of identification, assistance and protection rights that would not otherwise be available to them. The identification of transplantation-related exploitation as trafficking in persons for the removal of organs also imposes substantial and wide-ranging obligations on States with regard to criminalization and international legal and operational cooperation.

65. This duality of regimes is the product of historical factors and the distinct sets of skills and experiences that have shaped various aspects of our understanding of, and response to, trafficking in persons for the removal of organs. There is a clear need to bring together the circle of transplant surgeons, cultural anthropologists and health and human rights activists "who have developed remarkable knowledge" on trafficking in persons for the removal of organs within the circle of experts and practitioners working on trafficking in persons.[26]

66. When considering responses to trafficking in persons for the removal of organs, it is important to acknowledge the disproportionate burden that is placed on less-wealthy countries in relation to all aspects of the problem and its response. It is from those countries that most, if not all, victims originate and it is largely within less-developed countries that trafficking in persons for the removal of organs, including associated transplantation procedures, is actually conducted. Relatively wealthier countries are often the source of demand for trafficking in persons for the removal of organs. They do not bear the costs incurred to victims and are rarely the focus of calls for investigation and

[26] OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region*, p. 57.

prosecution. A human-rights-based approach requires a review of this situation and more equitable sharing of the burden of victim protection and support, in addition to legal and criminal justice responses.

67. **Below, the Special Rapporteur offers recommendations to States, medical and transplantation professionals and the international community.**

Legal and policy framework

68. **All States should ensure that the term "removal of organs" is included within their national legal definition of trafficking in persons and that "consent" to removal of organs is vitiated by any of the accepted means, including abuse of a position of vulnerability.**

69. **All States should also review the broader legal framework around transplantation-related exploitation to ensure, at a minimum, that related offences are fully and effectively criminalized and appropriately penalized. Such related offences include but are not limited to removal of an organ from a living or deceased donor without consent; removal of an organ from a living or deceased donor for financial gain or other advantage; the use of organs removed in such ways; and any form of advertising of a service relating to illicit removal and use of an organ.**

70. **All States should prohibit, absolutely and unconditionally, the removal of organs from executed prisoners and further prohibit the "donation" of organs by persons in official custody.**

71. **The national legal framework should clearly identify criminal responsibility, ensuring that it extends to intermediaries, brokers, medical and transplant staff and technicians who are involved in trafficking in persons for the removal of organs.**

72. **National legislation should include an obligation on medical personnel to notify authorities when they become aware of cases or potential cases of trafficking in persons for the removal of organs, with appropriate attention to issues of confidentiality and risks in cases of official complicity. This obligation should extend to medical staff involved in the provision of follow-up care to recipients.**

73. **The national legal framework should provide for both civil and criminal liability of legal persons, such as pharmaceutical and insurance companies and medical establishments, for involvement in trafficking in persons for the removal of organs.**

74. **All States, in particular countries of "demand", should take steps to ensure that the jurisdictional reach of their laws relating to trafficking in persons for the removal of organs enables the effective prosecution and punishment of related offences involving their nationals. For countries requiring specific legislation, this would be most effectively secured through laws that extend the national legislative prohibition on trafficking in persons for the removal of organs and related offences extraterritorially, irrespective of the legal status of the relevant acts in the country in which they occur. Extraterritorial legislation developed to combat child sex tourism and similarly situated offences can provide a useful model in this regard.**

75. **All States, in particular source countries for trafficking in persons for the removal of organs, should take legislative steps to prevent trafficking in persons for the removal of organs by way of transplant tourism through measures such as imposing restrictions on transplantation for foreign nationals, ensuring genuine transparency in the allocation of organs for transplantation and in the conduct of transplantations and preventing commercialization of transplantation.**

76. **All States should review laws and policies around transplantation to ensure that there are no gaps or incentives that would encourage or facilitate trafficking in persons for the removal of organs. For example, it is well established that permitting live transplantation from unrelated donors carries particular risks of exploitation, as does providing incentives to "donors" that go beyond reimbursement of genuine costs.**

77. **All States, in particular countries of "demand", should ensure that funding of, or reimbursement for, the costs of transplant tourism (whether by private health insurers, public health funds or travel insurers) is prohibited.**

78. **All States should take steps to ensure that trafficking in persons for the removal of organs is fully and appropriately incorporated into national policies on trafficking in persons, including national action plans and national coordination and response mechanisms.**

79. **All States should ensure that their reporting systems on trafficking in persons include trafficking in persons for the removal of organs as a distinct category.**

Victim identification, protection and support

80. **States have an obligation to take proactive measures to identify victims and potential victims of trafficking in persons for the removal of organs. Experience has shown that this will always require a proactive approach that includes direct outreach to at-risk communities.**

81. **Discharging the obligation of identification will also require States to review existing victim identification procedures, protocols and practices and revise them as necessary to reflect the particular situation of victims of trafficking in persons for the removal of organs, including challenges of identification that are unique to this form of exploitation. Further steps would include ensuring that those in a position to identify victims (such as medical professionals and front-line law enforcement officials) have the technical capacity to do so effectively and that structures and procedures are in place to support such identification.**

82. **All victims of trafficking in persons for the removal of organs have a right to immediate protection from further harm and to the necessary medical, psychological and other support. States should review existing procedures, protocols and practices of protection and assistance to victims of trafficking with a view to ensuring that these meet the particular needs of victims of trafficking in persons for the removal of organs, for example in relation to provision of follow-up medical care. States should develop specialized protection, assistance and support services for victims of trafficking in persons**

for the removal of organs to the extent that such are required to meet their needs.

83. **States should support the development of civil society capacity to work with and support victims of trafficking in persons for the removal of organs, including with regard to meeting longer-term needs for employment and medical care.**

84. **States should ensure that victims of trafficking in persons for the removal of organs are not prosecuted or punished for offences that relate to their having been trafficked, such as violation of laws relating to sale of organs.**

Victim access to justice

85. **States have an obligation to provide victims of trafficking in persons for the removal of organs with access to justice. To that end, States should ensure that victims have an enforceable right to legal assistance and that they are able to participate in the investigation and prosecution of their exploiters. Victims who are witnesses in criminal proceedings should receive special protection and support.**

86. **States should ensure that victims of trafficking in persons for the removal of organs have a legally enforceable right of access to remedies for the crimes and human rights violations that they have suffered. Remedies should reflect the nature and impact of the harm that has been committed against victims, including health-care costs and the long-term negative impact on their capacity to earn a living.**

Criminal justice responses

87. **Criminal justice responses to trafficking in persons for the removal of organs are an essential aspect of a rights-based response, i.e. addressing the impunity of exploiters and seeking to secure justice for victims.**

88. **All States, including States of demand, have an international legal obligation to investigate and prosecute cases of trafficking in persons for the removal of organs with due diligence. To discharge this obligation, States must ensure that their criminal justice agencies are aware of the issue and that they have the capacity and resources to respond effectively thereto.**

89. **States should review current mechanisms and procedures for investigating and prosecuting cases of trafficking in persons with a view to determining their suitability for cases of trafficking in persons for the removal of organs and the need for any adaptation. This should include a review of mechanisms and procedures for supporting the involvement of victims as witnesses.**

90. **States of demand and States of supply should develop networks, systems and mechanisms to exchange information and experiences and, more specifically, to support operational cooperation in the identification of victims and legal cooperation in the investigation and prosecution of cases of trafficking in persons for the removal of organs.**

Prevention and demand

91. **All States should work with the media and civil society, including the medical and transplant communities, to raise awareness of trafficking in persons for the removal of organs among potential target populations, including awareness of the risks involved in both selling and buying organs. In that regard, States should recognize the significant role that can be played by physicians in identifying and deterring trafficking in persons for the removal of organs and related practices, including transplant tourism.**

92. **States should cooperate with the national medical and transplant community to ensure that practitioners are aware of their legal obligations and to promote the development of an ethical culture around transplantation.**

93. **States should further cooperate with the national medical and transplant community in developing effective and transparent systems for transplantation supported by robust systems of oversight and reporting.**

94. **States should continue to reject all forms and avenues of commercialization of transplantation as a means of addressing demand-fuelled exploitation on the grounds of human rights concerns, including threats to basic principles of equality and non-discrimination.**

95. **Longer-term prevention strategies, including strategies to promote altruistic organ donation and ensure national self-sufficiency, should be developed within a strong human rights framework and with full attention paid to the need to avoid exploitation of all persons, including those who are especially vulnerable as a result of their economic and/or social situation.**

Improving data

96. **States should institute systems to collect information about trafficking in persons for the removal of organs and to share that information with other States and the international community. They should actively support innovative efforts by professional bodies and civil society to improve current understanding of the nature and extent of trafficking in persons for the removal of organs.**

Strengthening the international response

97. **Many of the tools and resources available to support stronger responses to trafficking in persons, including training materials and identification protocols, were developed when the modalities of trafficking in persons for the removal of organs were poorly understood and the extent not fully appreciated. International organizations, including the United Nations, should review these materials with a view to ensuring their application to the specific problem of trafficking in persons for the removal of organs.**

98. **International organizations working on trafficking in persons should consider developing special training materials and other resources for medical professionals who may be exposed to trafficking in persons for the removal of organs. These resources should aim to educate medical professionals about their legal and ethical obligations, ensure that they are familiar with existing**

codes of professional practice and provide them with guidance on responding to cases or potential cases of trafficking in persons for the removal of organs.

99. **The international human rights system, including the treaty bodies, should be encouraged to take up the issue of trafficking in persons for the removal of organs where this is warranted. In this regard, it is important to ensure that the laws, policies and practices of countries of demand and of countries of supply are subject to examination from the perspective of international human rights laws.**

100. **The development of new international legal regimes around trafficking in persons for the removal of organs should be based on a thorough review of the strengths and weaknesses of existing international legal regimes and seek to add substantive value to those regimes, while avoiding confusion and unnecessary duplication. It will be particularly important to ensure that new instruments, such as the proposed Council of Europe convention against trafficking in human organs, do not place victims in a less favourable position than they would otherwise be in under existing legal instruments dealing with trafficking in persons.**